

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

2 -----x
3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 -against-

6 XAVIER ONEAL,

7 Defendant.
8 -----x

9 TRANSCRIPT OF CRIMINAL CAUSE FOR
VIOLATION OF SUPERVISED RELEASE
10 BEFORE THE HONORABLE LASHANN DEARCY HALL
UNITED STATES DISTRICT JUDGE
11 VIA VIDEOCONFERENCE

12 APPEARANCES

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24 Proceedings recorded by mechanical stenography. Transcript
25 produced by computer-aided transcription.

GEORGETTE K. BETTS, RPR, FCRR, CCR
Official Court Reporter

PROCEEDINGS

1 (In open court; All present via videoconference.)

2 THE COURTROOM DEPUTY: Criminal cause for change of
3 plea and sentencing. Docket 16-CR-21. U.S.A. versus Oneal.

4 As a reminder, persons granted remote access to
5 proceedings are reminded of the general prohibition against
6 photographing, recording, and rebroadcasting of court
7 proceedings. Violation of these prohibitions may result in
8 sanctions, including removal of court-issued media
9 credentials, restricted entry to future hearings, denial of
10 entry to future hearings, or any other sanctions deemed
11 necessary by the court.

12 Counsel, please state your name for the record.

13 MS. BERENSON: Good afternoon, your Honor. Nomi
14 Berenson on behalf of the United States.

15 THE COURT: Good afternoon, good to see you.

16 MR. CREIZMAN: Good afternoon, your Honor. Eric
17 Creizman on behalf of Xavier Oneal, and it's very nice to see
18 you.

19 THE COURT: Nice to see you as well. I see we have
20 Mr. Oneal on the line and we have a representative from the
21 Probation Department; is that correct?

22 THE PROBATION OFFICER: Good afternoon. Ryan Lehr
23 on behalf of probation.

24 THE COURT: All right, folks.

25 So we're here today for a change of plea and

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1 sentencing hearing related to charges included on a July 21st,
2 2021 violation of supervised release report. Present today
3 are counsel for both the government, the defense has noted
4 their appearance for the record, the defendant is Mr. Oneal,
5 as well as a representative from the Probation Department.

6 Now, before I can proceed with this hearing in
7 earnest there is some housekeeping matters that I need to
8 address with respect to the conduct of these proceedings
9 remotely.

10 All right, folks. On March 27th, 2021, Congress
11 passed the Coronavirus Aid Relief and Economic Security Act,
12 which authorized the judicial conference of the United States
13 to provide authority to chief district judges to permit the
14 conduct of certain criminal proceedings by video or audio
15 conference. Thereafter, on March 30, 2020 by Administrative
16 Order 2020-13, then Chief Judge Mauskopf found that emergency
17 conditions due to the COVID virus outbreak would materially
18 affect the functioning of the Court within this judicial
19 district and therefore authorized judges in this district,
20 with consent of the defendant after consultation with counsel,
21 to use video conferencing to conduct proceedings such as
22 felony pleas under Rule 11 of the Federal Rules of Criminal
23 Procedure and felony sentencings under the same rules where
24 judges find for specific reasons that the proceeding in a
25 particular case cannot be further delayed without the serious

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1 harm to the interest of justice.

2 Now this order has been extended through a series of
3 administrative orders, the most recent of which is
4 Administrative Order 2021-5-3 dated December 16, 2021 and
5 issued by Chief Judge Brodie. By letter dated October 26,
6 2021, Mr. Oneal, through counsel, consented to proceed with
7 this hearing via video conference.

8 Now, I have made a determination that in light of
9 the ongoing pandemic and the backlog that has created with
10 respect to sentencing and in light of the specific facts of
11 this case, that this proceeding cannot be further delayed
12 without serious harm to the interests of justice. With that
13 said, I need to ensure that Mr. Oneal's consent to proceeding
14 in this fashion is made knowingly and voluntarily. As such,
15 I'm going to ask that Mr. Oneal answer some questions for the
16 Court so I can assess his competency, both with respect to the
17 consent and with respect to proceeding with the change of plea
18 and the sentencing.

19 Erica, can you please swear in Mr. Oneal.

20 THE COURTROOM DEPUTY: Mr. Oneal, please raise your
21 right hand.

22 (The defendant, XAVIER ONEAL, was sworn/affirmed.)

23 THE DEFENDANT: Yes.

24 THE COURTROOM DEPUTY: Thank you.

25 THE COURT: Mr. Oneal, do you understand that you

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1 are now under oath and if you answer any of my questions
2 falsely your answers may later be used against you in another
3 prosecution for perjury or making a false statement.

4 THE DEFENDANT: Yes.

5 THE COURT: All right. Mr. Creizman, have you
6 discussed this matter with Mr. Oneal?

7 MR. CREIZMAN: Yes, sorry, your Honor, I have. Yes,
8 I have.

9 THE COURT: Is he capable of understanding the
10 nature of these proceedings?

11 MR. CREIZMAN: Yes, your Honor.

12 THE COURT: And do you have any doubt as to his
13 competency to understand today's proceedings?

14 MR. CREIZMAN: I do not.

15 THE COURT: Mr. Oneal, can you state your full name,
16 please.

17 THE DEFENDANT: Xavier Oneal.

18 THE COURT: How old are you, sir?

19 THE DEFENDANT: Twenty-seven.

20 THE COURT: How much education have you had?

21 THE DEFENDANT: Tenth grade.

22 THE COURT: Tenth grade. Where did you go to
23 school?

24 THE DEFENDANT: Harker Heights High school.

25 THE COURT: Where is that?

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1 THE DEFENDANT: Killeen, Texas. Harker Heights,
2 Texas.

3 THE COURT: Harker Heights, Texas.

4 You're able to understand and speak English; is that
5 correct?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Mr. Creizman, you've been able to
8 communicate with Mr. Oneal in English; is that correct?

9 MR. CREIZMAN: Yes, your Honor.

10 THE COURT: Mr. Oneal, have you ever been treated or
11 hospitalized for any mental illness?

12 THE DEFENDANT: No.

13 THE COURT: Are you currently or have you recently
14 been under the care of a doctor or a psychiatrist for any
15 reason?

16 THE DEFENDANT: Psychiatrist, no.

17 THE COURT: Have you recently been in the care of a
18 medical doctor for any reason?

19 THE DEFENDANT: Besides like regular, like, asthma,
20 for my asthma, other than that, no.

21 THE COURT: For your asthma?

22 THE DEFENDANT: Yes.

23 THE COURT: Have you ever been treated or
24 hospitalized for any type of addiction, and that would include
25 drug or alcohol addiction?

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1 THE DEFENDANT: No, ma'am.

2 THE COURT: Have you taken any drugs, medicine,
3 pills or had any alcoholic beverages in the past 24 hours?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: Is your mind clear today?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: You understand what's happening here
8 today?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Are you consenting to the conduct of
11 this hearing which includes your change of plea and sentencing
12 voluntarily and of your own free will?

13 THE DEFENDANT: Yes.

14 THE COURT: Has anyone threatened or forced you to
15 conduct this hearing via video conference?

16 THE DEFENDANT: No.

17 THE COURT: Has anyone made you any promises that
18 caused you to consent to conducting this hearing via video
19 conference?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: All right. Based on my observations of
22 Mr. Oneal, his demeanor, his answers to my questions, as well
23 as the representations from his counsel, I find that he is
24 fully competent and capable of entering a consent to conduct
25 his change of plea hearing and sentencing via video

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1 conference. I also find that his consent is entered into
2 knowingly and voluntarily. I, therefore, accept his consent
3 and coupled with my independent factual finding I will now
4 pursue -- I'm sorry, I will now proceed via video conference
5 consistent with the CARES Act.

6 All right, Mr. Creizman, I understand that Mr. Oneal
7 wishes to plead guilty to Charges Two and Four of the
8 July 21st, 2021 violation of supervised release report.

9 MR. CREIZMAN: That's correct, your Honor.

10 THE COURT: Mr. Oneal, as you heard, Mr. Creizman
11 says that you wish to plead guilty to Charges Two and Four of
12 the July 21st violation of supervised release report.

13 Now to be clear, Charge Two charges that you
14 violated the conditions that you shall not commit another
15 federal, state or local crime by committing the crime of petty
16 larceny on June 13th, 2021. And Charge Four charges that you
17 violated the condition of home confinement with electric
18 monitoring by using approved employment leave for other
19 purposes and failing to remain home when instructed between
20 May 27th, 2021 and June 13th, 2021.

21 Is it correct that you wish to plead guilty to these
22 two charges?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: All right. Now this is a serious
25 decision and I must be certain that you're making it

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1 understanding your rights and the consequences of your plea.

2 So what I'm going to do now is explain to you the rights that
3 you will be giving up by pleading guilty.

4 Now before I accept your guilty plea, there are a
5 number of questions that I must ask to establish that it is a
6 valid and knowing plea and that you are acting voluntarily.

7 Give me a second.

8 If you would like to consult with your attorney at
9 any time for any reason, please let me know and I'll give you
10 as much time as you need to do so. And if you don't
11 understand any of my questions, please say so and I will
12 reword the question.

13 All right. Mr. Oneal, have you reviewed a copy of
14 the violation of supervised release report that is pending
15 against you, and that is the written document that identifies
16 the charges made against you in this case?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And have you fully discussed the charges
19 as well as the case in general with your attorney?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Mr. Oneal, do you understand the charges
22 that have been made against you?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Do you believe you had sufficient time
25 to discuss them with your attorney whether or not to plead

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1 guilty?

2 THE DEFENDANT: Yes.

3 THE COURT: Are you fully satisfied with the
4 counsel, representation and advice given to you in this case
5 by your attorney?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right. Now, Mr. Oneal, you should
8 understand that you have the right to plead not guilty to the
9 charges of supervised release and to make the government prove
10 that you committed the violations for which you are charged.
11 If you choose to plead not guilty, I would schedule an
12 evidentiary hearing at which time the government would have to
13 put forth evidence to prove that you committed the violation
14 with which you are charged. Now at that hearing you would
15 have the right to be represented by your attorney, you would
16 have the opportunity to cross examine the government's
17 witnesses and otherwise challenge the government's evidence.
18 You would also have the right to testify, if you so choose,
19 and put forward your own evidence regarding the charges.

20 Do you understand that, sir?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Are you willing to give up your right to
23 an evidentiary hearing and the other rights that I just
24 described?

25 THE DEFENDANT: Yes, ma'am.

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1 THE COURT: What I'm going to do now, Mr. Oneal, is
2 I'm going to explain to you the possible penalties for the
3 crimes to which you'll be pleading guilty.

4 Now as to Charge Two and Charge Four, the Court may
5 revoke the term of supervised release and sentence you to a
6 term of imprisonment not to exceed the maximum term of
7 imprisonment authorized under 18 U.S.C., Section 3583(e) (3),
8 which in this case, sir, is two years. The Court may also
9 order a new term of supervised release to follow each charge.
10 The new term of supervised release following a violation can
11 be up to the maximum term of supervised release that was
12 authorized at the original sentencing, which in this case is
13 three years, minus any custody order or prior and current
14 violations.

15 Mr. Oneal, do you understand the possible
16 consequences of a guilty plea here?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: I want to speak to you now, sir, about
19 the sentencing guidelines.

20 Under the Sentencing Reform Act of 1984, the United
21 States Sentencing Commission has issued guidelines for judges
22 to follow in determining the sentence in a criminal case. Now
23 these guidelines, Mr. Oneal, are advisory and I will consider
24 them along with the particular facts and circumstances of your
25 case and all the sentencing factors set forth in the relevant

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1 federal statute and, that is, 18 U.S.C., Section 3553(a) in
2 determining your sentence.

3 Now put it another way, the guidelines are a way to
4 help the Court determine where within a particular range your
5 sentence should fall and whether supervised release and/or a
6 fine should be imposed and, if so, how much. The guidelines,
7 Mr. Oneal, are not mandatory but the Court is required to
8 consider the guidelines.

9 Mr. Oneal, have you and your attorney discussed how
10 the advisory sentencing guidelines might apply to your case?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Mr. Creizman, have you discussed with
13 Mr. Oneal how the Court will use the statutory penalties, the
14 sentencing guidelines and the 3553(a) factors to arrive at an
15 appropriate sentence?

16 MR. CREIZMAN: Yes, your Honor, I have. I'm sorry.

17 THE COURT: No, no worries.

18 Now, Mr. Oneal, do you understand that your sentence
19 will be determined by a combination of the advisory sentencing
20 guidelines, possible authorized departures from the
21 guidelines, and other statutory factors?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Do you understand that the sentence I
24 impose may be different from any estimate your attorney may
25 have given you?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: I want to be clear about that. Any
3 estimate that your attorney may have given you could be wrong
4 and ultimately it's the Court's determination as to what the
5 appropriate sentence would be.

6 Do you understand?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Do you understand after your initial
9 advisory guideline range has been determined, I have the
10 authority in some circumstances to depart upward or downward
11 from the advisory guideline range and that could result in a
12 sentence that is either greater or lesser than the advisory
13 guidelines sentence.

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: All right. You understand, sir, that
16 there is no parole in the federal system and that if you are
17 sentenced to prison you will not be released on parole?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: All right. Does the government wish to
20 indicate what it believes the appropriate -- the applicable,
21 not appropriate, the applicable guidelines range is here.

22 MS. BERENSON: Your Honor, the government concurs
23 with the Probation Department's analysis in the report and so,
24 therefore, the applicable guidelines range would be eight to
25 14 months.

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1 THE COURT: All right. Mr. Creizman, do you have a
2 different estimate that you would like to provide to the
3 Court?

4 MR. CREIZMAN: I don't, your Honor. Although, as I
5 note in my sentencing submission, that we are asking for a
6 downward variance on the criminal history category to number
7 four, which would result in a six to 12-month range.

8 THE COURT: We'll talk about that.

9 Mr. Oneal, you've heard the government provide an
10 estimate of 18 to 14 months. You've also heard your attorney
11 indicate that an agreement with the 18- to 14-month guideline
12 range, but making reference to the fact that in the past the
13 Court had downwardly departed from that -- from the applicable
14 guideline range having indicated that your criminal history
15 previously was overstated.

16 MS. BERENSON: Your Honor?

17 THE COURT: Yes.

18 MS. BERENSON: If I may, it's eight to 14 months,
19 not 18 to 14 months.

20 THE COURT: Did I not say eight?

21 MS. BERENSON: Unless I misunderstood.

22 THE COURT: All right. I don't know. To be clear,
23 it's eight to 14 months. Okay.

24 Mr. Oneal, do you understand that the estimates that
25 have been offered by the government, the Probation Department

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1 and by your attorney could be wrong?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you understand that there is no
4 guaranty as to a particular guideline range or sentence?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And do you understand that ultimately I
7 must determine the applicable range?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: But do you also understand, sir, I'm not
10 required to sentence you to that range?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you understand that if the advisory
13 guideline range I determine is different than the guideline
14 range you expect, you cannot take your plea back?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Do you understand that if the ultimate
17 sentence I impose is different than what you hope for or
18 expect, you cannot take your plea back?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: All right. Mr. Oneal, do you have any
21 questions that you would like to ask me about the charge or
22 your rights or anything else before we proceed?

23 THE DEFENDANT: No, ma'am, not at this moment.

24 THE COURT: Would you like any additional time to
25 speak with your attorney?

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1 THE DEFENDANT: No, ma'am.

2 THE COURT: So are you ready to enter a plea at this
3 time?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Mr. Creizman, do you know of any reason
6 why Mr. Oneal should not plead guilty?

7 MR. CREIZMAN: No, I don't, your Honor.

8 THE COURT: All right. Mr. Oneal, what is your plea
9 as to Charge Two, which charges you with violating the
10 mandatory condition that you not commit another federal, state
11 or local crime?

12 THE DEFENDANT: Guilty.

13 THE COURT: And, sir, what is your plea as to Charge
14 Four, which charges you with violating the mandatory condition
15 of home confinement with electronic monitoring?

16 THE DEFENDANT: Guilty.

17 THE COURT: Are you making the plea of guilty for
18 each Charge Two and Four voluntarily and your own free will?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Has anyone threatened or forced you to
21 plead guilty?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Has anyone made you any promises that
24 caused you to plead guilty?

25 THE DEFENDANT: No, ma'am.

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1 THE COURT: Has anyone made any promises to you as
2 to what your sentence will be?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: All right. Now, what I'd like to do now
5 is hear from you, sir, what is the conduct that you engaged in
6 that makes you guilty of Charge Two and Charge Four.

7 Mr. Creizman, if there's a prepared statement he's free to
8 read that, otherwise I'll hear from him.

9 MR. CREIZMAN: Your Honor, there is a prepared
10 statement -- actually Mr. Oneal and I worked together on this
11 prepared statement a few months ago. In just talking with him
12 before the weekend I said I would re-send the statement
13 through Corrlinks email and he -- but as of this morning he
14 had not received it. And so I wonder if I could take a moment
15 to just talk to him just to make sure he's comfortable with
16 making a statement as to the offense conduct, you know,
17 because we had prepared a statement.

18 I just am wondering whether -- if he feels
19 comfortable to proceed, otherwise that's fine as well --

20 THE COURT: He has to allocute one way or another.
21 If you need a few minutes, that's fine. I'm not certain you
22 can mute your devices.

23 Do you have a way to communicate with him?

24 MR. CREIZMAN: Yes, if Mr. Oneal is able to call --
25 so he called my cell shortly before this appearance, but I'm

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1 not sure whether he's able to now, but if he is, great. If
2 not, we can proceed.

3 THE COURT: Let's take a five minute recess.

4 MR. CREIZMAN: Thank you.

5 THE COURT: If you could please, though, don't
6 forget to mute your devices so that we don't hear your
7 conversation.

8 MR. CREIZMAN: Of course, thank you. I apologize, I
9 appreciate it.

10 THE COURT: No worries. Thanks.

11 (Pause in proceedings.)

12 THE COURT: Mr. Oneal, do you need to get one of the
13 officer's attention so you have the ability to use the phone?

14 I think he's frozen.

15 (Pause in proceedings.)

16 THE COURT: His device is not muted, but he's
17 frozen.

18 MR. CREIZMAN: We're talking now actually. It looks
19 like he's frozen.

20 THE COURT: You know what it is, I think his device
21 is muted because the screen is frozen, I'm not getting the
22 indication that it's actually muted, okay.

23 MR. CREIZMAN: Okay, thank you.

24 (Pause in proceedings.)

25 MR. CREIZMAN: Thank you.

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1 (Resumed.)

2 THE COURT: All right. Is Mr. Oneal ready to
3 proceed? We need to get his system back, he's frozen. There
4 we go. Okay.

5 MR. CREIZMAN: There he is.

6 THE COURT: All right. Mr. Oneal, let's start with
7 Charge Two. Would you please tell the Court the conduct that
8 you engaged in which makes you guilty of Charge Two.

9 THE DEFENDANT: On Charge Two on June 13th, 2021 I
10 entered a Home Depot, took merchandise from shelves, placed in
11 my shopping cart and left the store without paying. I knew
12 what I did was wrong and against the law.

13 For Count Four, between May 27th, 2021 and
14 June 13th, 2021, I violated my conditions of home confinement
15 with electronic monitoring by using my appointment leave for
16 purposes other than my job and failure to remain home when
17 supposed to.

18 THE COURT: Just so that I'm clear, you visited the
19 Wood Haven Home Depot on May 27th and on May 29th and May 31st
20 of 2021; is that correct?

21 THE DEFENDANT: May 27 --

22 THE COURT: You visited the Wood Haven Home Depot
23 three times: May 27th, May 29 and May 31st of 2021.

24 If you don't recall specifically, that's fine.

25 THE DEFENDANT: I don't recall specifically.

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1 THE COURT: But do you recall that you visited the
2 Wood Haven Home Depot approximately three times.

3 THE DEFENDANT: Yes, yes, ma'am.

4 THE COURT: All right. And do you recall that you
5 visited the Gateway Home Depot on one occasion?

6 THE DEFENDANT: I'm not too sure.

7 THE COURT: You're not sure about that one?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: What about the Northern Boulevard Home
10 Depot on May 31st and June 5th, do you recall those visits?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: What about on May 31st and June 5th, the
13 25th Avenue Home Depot?

14 THE DEFENDANT: I don't recall, ma'am.

15 THE COURT: You don't recall.

16 And what about a visit to the Maspeth Home Depot on
17 May 31st and June 5th?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: All right. Do you also recall that
20 after you were instructed not to leave your home by the
21 Probation Department after your arrest, that you left your
22 residence approximately 13 times on June 20, 2021; June 27th,
23 2021; July 1st, 2021; July 2nd, 2021; July 4th, 2021;
24 July 5th, 2021; July 6th, 2021; July 7th, 2021; July 9th,
25 2021; July 10, 2021; July 12, 2021; July 13, 2021; and

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1 July 14, 2021.

2 Do you recall leaving your residence without
3 approval from the Probation Department on those dates?

4 THE DEFENDANT: I don't know precisely if I left my
5 residence or it was like in my building because -- but, yes,
6 ma'am.

7 THE COURT: Okay, you realize your residence would
8 be your apartment. So if you went downstairs to somebody
9 else's house, you understand that's not your residence, right?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: You understand the lobby is not your
12 residence, right?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right. So when I ask if you left
15 your residence on those occasions, you agree that you left
16 your residence on those occasions?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Ms. Berenson, do you require any further
19 information from Mr. Oneal before we proceed?

20 MS. BERENSON: No, your Honor.

21 THE COURT: All right. Now based on my observations
22 of Mr. Oneal, his demeanor in court, his answers to my
23 questions and the representations of his counsel, I find that
24 he is fully competent and capable of entering an informed plea
25 and he is aware of the nature of the charges and consequences

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1 of his plea. I, therefore, find his plea of guilty as to each
2 Charge Two and Charge Four as knowing and voluntary and
3 supported by an independent bases and facts containing the
4 essential elements of each offense. I, therefore, accept
5 Mr. Oneal's plea of guilty as to Charges Two and Four of the
6 July 21st, 2021 violation of supervised release report.

7 Now my understanding is that counsel is prepared for
8 the Court to immediately move to sentencing, yes?

9 MR. CREIZMAN: Yes, your Honor.

10 THE COURT: All right. Now in advance of the
11 sentencing hearing I did receive a July 21st, 2021 violation
12 of supervised release report filed on the docket as ECF number
13 185. I also received a letter dated October 26, 2021 from
14 counsel, defense counsel informing the Court of Mr. Oneal's
15 intent to enter a change of plea and sentence remotely, as
16 well as a sentencing submission by Mr. Creizman dated
17 November 16, 2021.

18 Ms. Berenson, am I correct I did not receive any
19 sentencing submission from the government or did I miss it?

20 MS. BERENSON: You did not, your Honor. Yes, the
21 government is in complete accord with the Probation Department
22 and agrees with its sentencing recommendation.

23 THE COURT: Okay.

24 MS. BERENSON: I think the government might
25 specifically advocate for a guideline sentence, but for the

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1 reasons set forth in the Probation Department, the government
2 is in accord with the Probation Department.

3 THE COURT: All right. Just give me a moment,
4 folks.

5 (Pause in proceedings.)

6 THE COURT: Forgive me. All right.

7 Are there any other documents that the Court should
8 have before it at this time, any other submissions either
9 party would like to make?

10 MR. CREIZMAN: No, your Honor, although I just --
11 I'm not sure whether I -- whether your Honor received the
12 report from Dr. Eric Goldsmith, I believe your Honor did, but
13 I just don't remember --

14 THE COURT: I did.

15 MR. CREIZMAN: -- if it was sent separately or as an
16 exhibit.

17 THE COURT: No, it was filed with your sentencing
18 submission --

19 MR. CREIZMAN: Yes, okay.

20 THE COURT: -- and the sentencing submission is
21 document 208. Dr. Goldsmith's letter is document 208-1.

22 MR. CREIZMAN: Thank you, sorry.

23 THE COURT: That's all right.

24 As I discussed previously, with respect to the
25 statutory penalty here, the Court may revoke the term of

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1 supervised release and sentence Mr. Oneal to a term of
2 imprisonment not to exceed the maximum term previously
3 authorized, which under 18 U.S.C. 3583(e) (3), again which in
4 this case is two years, I have already set out in the change
5 of plea portion of this proceeding the Court's calculation of
6 the sentencing guideline -- no, I didn't. Forgive me. I did
7 not. Let me do it now.

8 Charge Two is a Grade C violation as defined by
9 Sentencing Guideline 7B1.1(A) (3). Upon a finding of a Grade C
10 violation, the Court may revoke supervised release and impose
11 custody or extend or modify the existing term of supervised
12 release and that is pursuant to Sentencing Guidelines
13 Section 7B1.3(A) (2). Now since the Criminal History Category
14 of VI was found applicable at the original sentencing, the
15 custodial term for this violation is eight to 14 months and
16 that is pursuant to Sentencing Guidelines Section 7B1.4(A).

17 Charge Four is a Grade C violation as defined by
18 Sentencing Guidelines Section 7B1.1(A) (3). Again, upon a
19 finding of a Grade C violation, the Court may revoke
20 supervised release and impose custody or extend or modify the
21 existing term of supervised release. Here again because the
22 Criminal History Category of IV was found applicable at the
23 original sentencing, the custodial term for this violation is
24 also eight to 14 months.

25 Are there any objections for the record?

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1 MR. CREIZMAN: No objection to your Honor's
2 calculation.

3 THE COURT: All right. Now the government has made
4 it clear that it believes that a guideline sentence in this
5 case is appropriate. I will hear from Mr. Creizman -- hold on
6 a second. If I said he had a criminal category -- my clerk
7 thinks I misspoke. If I said he had a Criminal Category of
8 IV, I meant VI.

9 In any event, Mr. Creizman, I don't believe that it
10 is your position that there are any statutory departures that
11 are applicable to this case, but rather that the Court should
12 employ its authority to vary downward; is that right?

13 MR. CREIZMAN: That's correct, your Honor, that's
14 correct.

15 THE COURT: So let me just set out the law with
16 respect to variances.

17 After calculating the guidelines and considering the
18 propriety of a departure, of which I find no basis, I must now
19 consider the relevant factors set out by Congress in 18
20 U.S.C., Section 3553(a) to ensure that I impose a sentence
21 that is sufficient, but not greater than necessary to comply
22 with the purposes of sentencing. Now these purposes include
23 the need for the sentence to reflect the seriousness of the
24 crime, promote respect for the law, as well as provide just
25 punishment for the offense. The sentence should also deter

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1 criminal conduct, protect the public from future crime by the
2 defendant, and promote rehabilitation.

3 In addition to the guidelines and policy statements,
4 I must consider the nature and circumstances of the offense,
5 the history and characteristics of the defendant, the need to
6 avoid unwarranted sentence disparities amongst similarly
7 situated defendants, and the types of sentences available.

8 Here you are, you moved. Sorry, the screen is
9 moving around.

10 Ms. Berenson, did you want to say something?

11 MS. BERENSON: I just got kicked off and got back on
12 but for a moment you froze on my screen and it was silent, I
13 didn't know if that happened to others as well.

14 MR. CREIZMAN: It did not happen with me, the screen
15 moved around.

16 THE COURT: The screen did move around, it did. I
17 looked up and you were in a different place.

18 MS. BERENSON: Okay.

19 THE COURT: What I said, Ms. Berenson, you've heard
20 me say a gazillion times, which is the backdrop against -- the
21 legal backdrop against which the Court must consider
22 variances.

23 MS. BERENSON: Thank you.

24 THE COURT: All right. I'll hear from defense
25 counsel first.

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1 MR. CREIZMAN: Thank you, your Honor. I don't want
2 to -- I'm sure your Honor -- and I know your Honor has read
3 all of the submissions and carefully. There are just a couple
4 of things I want to highlight and point out. I mean, I got in
5 to speak to and talk with Mr. Oneal from the time right before
6 he was remanded, the day before he was remanded and actually
7 did what the Court ordered, which of course is expected, but
8 he did report -- he did self-surrender to the Marshals
9 Service.

10 You know, Mr. Oneal is a very nice person. He's a
11 kind person. He's a friendly person and he is someone who I
12 sense, at least, he wants to get -- wants to turn his life
13 around. I mean, he said that in words to the Court before,
14 he's written to the Court before.

15 And there is a huge disconnect between what
16 Mr. Oneal has said and I think actually Count Four is a little
17 in some ways more concerning in terms of the violations of
18 home confinement by just leaving whenever it seems like --
19 serially leaving day after day after day. And I started
20 reading his prior history in terms of -- and it seems that he
21 was diagnosed at one time, or teachers of his suspected he had
22 ADHD, and that is consistent with what I understand, you know,
23 his impulsivity it seems to me.

24 I mean, what the ultimate point is, is that we have
25 an opportunity here to try to guide, to help Mr. Oneal get in

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1 the best possible -- give him the best possible chance to
2 succeed so he doesn't keep coming back to court and through
3 the justice system.

4 THE COURT: Didn't I do that for Mr. Oneal when I
5 let him out of jail?

6 MR. CREIZMAN: You did, your Honor, you absolutely
7 did. I think the one difference that I think -- the one thing
8 that we may want to try here is to get him -- is to order
9 mental health treatment in addition to the substance abuse
10 issue. But I think --

11 THE COURT: The substance abuse issue that Mr. Oneal
12 has denied and doesn't necessarily bear out with the test.
13 Putting aside --

14 MR. CREIZMAN: Recently, yes.

15 THE COURT: Putting aside the marijuana, I
16 understand he tested positive for the marijuana, but there was
17 at least a suggestion that Mr. Oneal used other substances and
18 the tests did not bear that out and Mr. Oneal denied any such
19 dependency.

20 MR. CREIZMAN: Yes, that I recall. I do recall
21 that. But I know there's been a history of use of substances
22 and that's kind of what I'm referring to not necessarily the
23 triggering --

24 THE COURT: But if it's not a present issue --

25 MR. CREIZMAN: No -- yes, absolutely. I think the

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1 focus here would honestly be on the -- on addressing what
2 we -- what Dr. Goldsmith thinks is a severe form of ADHD and I
3 think that -- I think that that's -- there is an opportunity
4 here at least to try that and see if it could -- and see if
5 Mr. Oneal can take advantage of that.

6 He has a very supportive family. His adoptive
7 mother and his siblings, you know, from that family they're
8 all very supportive. They are accomplished people, they are
9 working people, and I think that -- you know, we have to try
10 something so that Mr. Oneal is not stuck in this situation.

11 THE COURT: I guess I'm confused. I've never heard
12 of ADHD being identified medically as a basis for someone to
13 commit federal, state and local crimes. I've never seen there
14 being any connection between the two. Putting aside the fact
15 that Mr. Oneal decided that he could ignore the orders of this
16 Court and his probation officer and leave even after being
17 arrested, and so I've never heard of there being any medical
18 connection between ADHD and the commission of the types of
19 crimes that Mr. Oneal has pleaded guilty to with respect to
20 Charge Two, but of course the Court may consider uncharged
21 conduct and sentence him as well and so there were additional
22 larcenies that were charged originally in this complaint of
23 the same sort and nature as Charge Two.

24 MR. CREIZMAN: Understood. I understand that
25 ADHD -- there may or may not -- you know, I'm not aware of any

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1 studies that show a correlation necessarily between ADHD and
2 criminal activity, but there is a very strong correlation
3 between ADHD and impulsivity --

4 THE COURT: Right. But let's talk about the
5 criminal activity, because what I have here is a defendant who
6 I personally undertook, through a really lengthy resentencing
7 hearing, to release him on time served and he immediately
8 began to engage in criminal activity.

9 So I understand, Mr. Creizman, that you're saying
10 that you think that the more serious issue here is him
11 leaving, taking unauthorized departures from his home, but I
12 haven't yet resolved myself with respect to the criminal
13 activity that Mr. Oneal engaged in immediately.

14 MR. CREIZMAN: Well, obviously I'm not a
15 psychiatrist, but I do wonder whether the extreme impulsivity
16 that he seems to have might be, might contribute in some way
17 to his desire to, you know -- you know, apparently, you know,
18 going off the -- going off the way --

19 THE COURT: Yes, but -- wait, we've got to stop for
20 a second. It doesn't seem all that impulsive to me. If you
21 look at the charges here and you look at what Mr. Oneal did,
22 he, on many of these days, visited multiple Home Depots,
23 multiple Home Depots. He didn't just happen to be in a Home
24 Depot then find himself with \$1300 worth of merchandise in his
25 pocket. What he did was, he lied about where he was suppose

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1 to go, knowing he wasn't supposed to go there, then traveled
2 on a single day to multiple Home Depots, which speaks not to
3 impulsivity right, but the planning and calculation and utter
4 lack of regard not just for the order of this Court but for
5 the opportunity that this Court gave him.

6 MR. CREIZMAN: I certainly appreciate that, your
7 Honor. I do. And I think that Mr. Oneal has, you know -- is
8 being appropriately punished for that conduct, you know, and
9 my suggestion -- by the way, I did want to correct something
10 in my sentencing submission that came to my attention just
11 recently. I had mentioned that he previously was in a halfway
12 house and he did -- did well in the structure of the halfway
13 house. Apparently I misunderstood in that he did not in
14 his -- when he was previously released he did not have a
15 halfway house term. But I do think that rather than
16 additional confinement in a prison, that he might benefit from
17 the halfway house, the structure of the halfway house. The
18 ability to see his -- to spend time with his daughter
19 potentially and the ability to be -- to go to programs and to
20 be held accountable for those programs, you know, and
21 specifically mental health treatment. That's --

22 THE COURT: But this was an opportunity that was
23 provided to Mr. Oneal, I gave it to him, right?

24 MR. CREIZMAN: Yes, I understand.

25 THE COURT: I mean, the circumstances of this case,

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1 the facts of this case are so maddening to me, they are
2 maddening to me --

3 MR. CREIZMAN: I understand.

4 THE COURT: -- because I gave him the opportunity
5 and when I gave him the opportunity, and I'm certain,
6 Mr. Creizman, you have looked at the transcript --

7 MR. CREIZMAN: Yes.

8 THE COURT: -- I made it abundantly clear to
9 Mr. Oneal that he should not mistake kindness for weakness and
10 that my expectation of him is that he was going to take this
11 opportunity and do with it what the Court and what I would
12 hope, based on what he said to me, right, because there are
13 also representations by Mr. Oneal made to me that day --

14 MR. CREIZMAN: Yes.

15 THE COURT: -- and I will note that the Court's
16 determination on that day to release Mr. Oneal on time served
17 was over the strenuous objection by the government. The
18 government said, Judge, you're wrong. You've got it wrong
19 here. You're making a mistake. And I said, well, you believe
20 what you want, I want to give Mr. Oneal this opportunity. And
21 what did Mr. Oneal do immediately, and repeatedly. Mr. Oneal
22 has a problem.

23 Mr. Oneal has got to get introduced to all sides of
24 Judge DeArcy Hall. He was able to see the other side of Judge
25 DeArcy Hall, but I made myself clear on the day that I granted

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1 the compassionate release and released Mr. Oneal to time
2 served.

3 You know, your sentencing submission here,
4 Mr. Creizman, it speaks about alternatives to incarceration,
5 which I am in favor of --

6 MR. CREIZMAN: I understand.

7 THE COURT: -- absolutely. Anybody can look at my
8 track record and the way in which I address sentencings and
9 individuals, my ultimate goal is to provide them with the
10 resources and opportunities to make different choices in their
11 life, but there also must be accountability and --

12 MR. CREIZMAN: Absolutely.

13 THE COURT: -- here you said about alternatives to
14 incarceration that his repeated history with the criminal
15 justice system and the danger of further incarceration would
16 cause him to be trapped in a cycle where he oscillates between
17 supervised release and prison.

18 Well, first of all, it's not his history with the
19 criminal justice system that's going to put him in prison,
20 it's his current engagement in criminal activity that would
21 put him --

22 MR. CREIZMAN: Absolutely.

23 THE COURT: -- back in prison. We don't -- this is
24 not a situation here, because I don't do it, where I would
25 put, you know, let's say, for example, a minor supervision

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1 violation and there are some judges that immediately will put
2 a person in prison. That's not the case here. That's simply
3 not the case here.

4 And so I won't -- I cannot allow this sentencing
5 proceeding to proceed against the backdrop that doesn't fit
6 this case. This is simply not a case where Mr. Oneal hasn't
7 been given opportunities. This is simply not a case where the
8 notion that any jail time or further jail time in this case
9 would result in over-incarceration that unnecessarily creates
10 additional unwarranted and detrimental contact with the
11 criminal justice system where alternatives may exist.

12 Mr. Oneal was released and immediately upon his
13 release began to engage in criminal conduct and that is
14 putting aside -- that is putting aside the repeated offenses
15 of leaving his home, which by the way, again I don't believe
16 was impulsive. You want to know why I don't believe it was
17 impulsive, Mr. Creizman?

18 MR. CREIZMAN: Yes, I do.

19 THE COURT: Because he explained to his probation
20 officer repeatedly that he didn't think he should have do it
21 and it wasn't part of the sentence. He said, I don't think I
22 should have to do this, this is wrong. The probation officer
23 said, no, no, no, you need to talk to your lawyer, you need to
24 raise it with the Court. And what he said is, I'm going to do
25 what I want to do. So that undermines the notion that

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1 anything that has happened here is a result of any mental
2 health problem.

3 What it seems to me is that Mr. Oneal has decided
4 that he's going to do what he wants to do, notwithstanding
5 what this Court has said, and notwithstanding I think the
6 generosity that this Court has previously displayed to him.

7 Obviously I feel strongly about this case,
8 Mr. Creizman, I am -- I respect the way in which you have
9 advocated for Mr. Oneal here. I just don't believe that
10 categorically, and this is -- you know, that we can say that
11 in every instance where you have even a young man like
12 Mr. Oneal that in every instance that punishment is not
13 necessary and that it must be an alternative to incarceration
14 without the punishment first, sufficient punishment.

15 MR. CREIZMAN: Your Honor --

16 THE COURT: Sufficient punishment.

17 MR. CREIZMAN: Absolutely. Absolutely. And, your
18 Honor, I am not suggesting that your Honor depart from the
19 guidelines range, however it is ultimately determined I guess,
20 but meaning if he -- he needs to be certainly -- punishment
21 needs to play a part here, but again he's been through the
22 system so many times that my thought was, is there some way,
23 is there some path he can take other than -- because if it is,
24 you know, given that the purpose of supervised release is to
25 try to -- is try to help with reentry into society and, you

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1 know, he violated it -- and I'm not asking for, you know, the
2 greatest of leniency here but I'm saying maybe we can all work
3 together and figure out if there's some way, something
4 different that could help that -- he's saying -- he is saying
5 he wants to do the right thing and so if maybe there is some
6 sort of opportunity that he can take advantage of that he
7 hasn't considered himself is all I'm saying. And --

8 THE COURT: Mr. Creizman, if I have to decide
9 about -- you know, so we have a guidelines range here and I'm
10 allowed to sentence above or below the guidelines, however the
11 Court deems appropriate, but if Mr. Oneal isn't an individual
12 worthy of a sentence at the higher end or the mid range of the
13 guideline range, what defendant is? I mean --

14 MR. CREIZMAN: I understand, your Honor.

15 THE COURT: -- what does Mr. -- what do I have
16 before me that would suggest that a sentence at the lower end
17 of the guidelines range is appropriate for this defendant,
18 what fact do I have? Because I'm telling you, I absolutely
19 reject the notion that any of the conduct here is related to
20 any ADHD and impulsivity, because the facts here undermine
21 that conclusion in its entirety. There is deliberateness,
22 there is recalcitrance.

23 Again, Mr. Oneal said to his probation officer, and
24 somebody will correct me if I'm wrong, that he should not be
25 on home confinement, that he didn't believe that should be or

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1 was part of the conditions of his release. The probation
2 officer told him it was, he decided that he was going to act
3 differently. That's not impulsive. Going to multiple Home
4 Depots locations on a series of days, right, because it wasn't
5 just one time, when I purposely read all of the dates and all
6 of the various locations to illustrate the planning and
7 thoughtfulness that went into what Mr. Oneal, the conduct that
8 he engaged in.

9 So I'm just trying to understand what about the
10 facts in this case, not kind of an ideological position
11 separate from this defendant, but tethered to the facts of
12 this case make it such that Mr. Oneal should have a low end
13 guidelines sentence?

14 MR. CREIZMAN: Well, your Honor, I'm not -- I'm not
15 suggesting a sentence that is not, you know -- I'm not
16 necessarily suggesting a shorter sentence so much as a
17 sentence that explores -- I mean, he's already served I think
18 now at least six months in --

19 THE COURT: Seven, my count is seven months, but I
20 could be wrong.

21 MR. CREIZMAN: Seven months. Okay. And so my
22 thought is that if -- that he could remain in incarceration,
23 that's one, you know, option, but I'm saying he also could
24 spend the rest of his sentence, whatever -- however long it
25 is, in home confinement -- not home confinement, I did not

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1 mean to say home confinement, I meant to say --

2 THE COURT: You meant community confinement.

3 MR. CREIZMAN: -- community confinement, that would
4 be a major mistake that would -- you know, I don't want the
5 Court to be angry that I'm asking for that.

6 THE COURT: Mr. Creizman -- for the record,
7 Mr. Creizman and I used to be colleagues in my former life,
8 but he's never appeared before me, but Ms. Berenson can let
9 you know the fact that I am animated certainly doesn't mean
10 that I am upset with anyone.

11 MR. CREIZMAN: No.

12 THE COURT: This is -- I'm an animated person, is
13 that fair, Ms. Berenson?

14 MS. BERENSON: It is fair, your Honor.

15 MR. CREIZMAN: I would say that my recollection of
16 you, is that you were animated then too and I myself am
17 animated --

18 THE COURT: But I'm not upset with -- I'm not upset
19 with any arguments that you've made here, I just don't agree
20 with them.

21 MR. CREIZMAN: I understand. And I'm trying to say
22 that I don't -- look, I'm saying that if it needs to be at the
23 higher end of the guidelines it still doesn't preclude the
24 Court from putting him into community confinement.

25 THE COURT: Well, then we're probably on the same

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1 sheet of music then, Mr. Creizman.

2 MR. CREIZMAN: Okay, that sounds good, I like that.

3 THE COURT: All right. Perhaps I misunderstood and
4 I think we are probably talking about the same thing the whole
5 time.

6 At the end of the day, Mr. Oneal, you can see the
7 Court is particularly frustrated with you, but you're a grown
8 man, I'm certain you can appreciate my frustration, am I
9 right? You can understand why it is I might be this
10 frustrated with you, Mr. Oneal?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: All right. So part of my frustration is
13 because -- and this is -- I promise this is not because of my
14 refusal to say I was wrong, it's because I made some
15 determinations about you when I resentenced you and those
16 determinations that I made was that you have the ability, the
17 intellect and certainly if you chose to, the wherewithal to
18 make better choices for yourself and for our community. And
19 what you did when you got out was decided that you were going
20 to betray yourself as well as the Court and in making choices
21 that were contrary to the representations that you made to me
22 just before or at the sentencing hearing just before your
23 release.

24 THE DEFENDANT: Can I say something, your Honor?

25 THE COURT: You absolutely may say something,

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1 Mr. Oneal.

2 THE DEFENDANT: I feel like I -- I feel like certain
3 things is way out of context. Like, I feel, like, certain
4 things in that probation report and in the report period makes
5 me looks way, way -- like, makes this whole situation like
6 way -- I left my house 13 -- a million times. I went to Home
7 Depot and certain places. It did not -- that's no, no. Like,
8 me just going to Home Depot, I had permission. I notice in
9 the probation report that the probation officer said that my
10 boss said I never had no permission to go to no Home Depot.
11 As even noted and as we spoke, there was renovation going on
12 at my place of employment and I was sent to certain different
13 Home Depots at certain different times.

14 THE COURT: Were you sent there to steal?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: Then you know what?

17 THE DEFENDANT: No, but --

18 THE COURT: At the end of the day, Mr. Oneal, what
19 we do know is that on some occasions you went to Home Depot,
20 right after I let you out, to steal. That's what we know. So
21 if you're concerned about what may have been a
22 miscommunication between your lawyer and the probation
23 department, what I'm going to tell you is don't you worry
24 about that, don't worry about that at all because what I have
25 a problem with is that you went to Home Depot to steal. So do

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1 you want to talk about that?

2 THE DEFENDANT: Jeez.

3 THE COURT: I'm sorry, Mr. Oneal?

4 THE DEFENDANT: Your Honor, I did not go to Home
5 Depot with the intent to steal, that did not happen.

6 THE COURT: No. Okay.

7 THE DEFENDANT: I was there and, you know...

8 THE COURT: Yes. You asked for an opportunity to
9 speak, are you done?

10 THE DEFENDANT: Yes. I'm saying -- trying to speak.

11 THE COURT: I'm sorry. I'm listening to you,
12 Mr. Oneal, but, you know, you're a grown man, I'm a grown
13 woman and if we're going to have a conversation it's going to
14 be an honest one. I told you that -- I've articulated to your
15 attorney my frustration and why. You know, we were -- it was
16 a little over a year ago that we were all on a call together
17 where --

18 THE DEFENDANT: I fully understand.

19 THE COURT: -- I talked to you about next steps and
20 trying to do right and making sure you make the right choices
21 and, Mr. Oneal, you immediately, immediately started
22 committing crimes of the same sort, not the same degree, I'm
23 going to give you that certainly -- and I appreciate,
24 Mr. Creizman, when you say none of these were non-violent
25 crimes, that matters to me significantly.

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1 But immediately, Mr. Oneal, it was like you -- we
2 were on the phone, but in effect looked me in my face and told
3 me you were going to do one thing and then immediately went
4 and did another. You know, put judge aside for a second, at
5 the end of the day your word to me -- I mean, I'm a little
6 older than you, but when I grew up what we used to say is my
7 word is my bond.

8 THE DEFENDANT: Your Honor, you know, I want to say,
9 your Honor, I try to do good, try to stay on my word. Certain
10 circumstances happen. Your Honor, I apologize. I'm not going
11 to sit here and try to minimize it, try to make excuses, your
12 Honor, all I do is just move forward from here today.

13 THE COURT: That I appreciate, Mr. Oneal. What you
14 just said right now I appreciate. What you were saying
15 before, I didn't appreciate it as much, I got to tell you
16 that, you know, but what you just said just now, because at
17 the end of day we just have to have candid conversations. You
18 speak through your lawyer, I speak with the government, but at
19 the end of the day you're a grown man.

20 THE DEFENDANT: Yeah, but at the same time I feel
21 like certain things make me look way worse, like, how you said
22 I went and said, oh, oh, I don't steal, I'm not supposed to be
23 on this sentence, and I didn't chose what I wanted to do and I
24 feel like that was taken out of context.

25 So I spoke to my probation officer about something I

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1 thought that wasn't right. He did say speak to his lawyer,
2 but I did not sit there and have, like, the way it was
3 presented, like I presented it, I don't know or, like, I just
4 chose to be rebellious, I'm out here doing whatever I want,
5 that's not --

6 THE COURT: Did your probation officer tell you, no,
7 you need to be on home confinement? Was that made clear to
8 you? I understand that you told him you thought that you
9 shouldn't. Was it made clear to you by your probation officer
10 that, in fact, as far as he understood you needed to be on
11 home confinement.

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Was that unclear? Right. And you
14 didn't do that.

15 THE DEFENDANT: But that's not unclear, that part
16 wasn't unclear. Like at the same time, your Honor, I'm home.
17 So the unclear part is like me going to the mailbox. I don't
18 know that it's going no saying I left my residence. Honestly,
19 I do go to the corner store. I'm home. My mom working. What
20 am I really going to do? I'm going to the corner store. I'm
21 going to get something to eat, I'm coming back to my house.
22 I'm not minimizing it, your Honor, but --

23 THE COURT: Hold on a second. Mr. Lehr, did you
24 understand there was some confusion on the part of Mr. Oneal
25 as to what the parameters were with respect to home

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1 confinement? Did you ever have an opportunity to explain to
2 him that going to the corner store perhaps was also a
3 violation and that home meant at home?

4 Give me a moment.

5 (Pause in proceedings.)

6 THE PROBATION OFFICER: Yes.

7 THE COURT: Yes, I'm back.

8 THE PROBATION OFFICER: Your Honor, we had
9 discussion on multiple occasions.

10 First, we'll just address the mailbox and kind of
11 going downstairs and so forth. There was a point where we
12 mitigated that situation because his mother -- the family owns
13 the building that he lives in, so he has certain
14 responsibilities, particularly the garbage and cleaning up and
15 sweeping up.

16 So once we got that established I provided a
17 schedule on a daily basis, whatever it was, a half hour, 45
18 minutes so he could perform those chores. So that became --
19 that was a non-issue after a period of time.

20 THE COURT: Do you know when was that approximately?

21 THE PROBATION OFFICER: Your Honor, I would say that
22 was probably, you know, maybe halfway through his term on
23 ankle bracelet. I mean, I had the conversation --

24 THE COURT: Before or after the arrest is the
25 question I guess.

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1 THE PROBATION OFFICER: I think I actually, as I
2 recall, I did it even after the arrest. Because I didn't want
3 him to be or his mother really to be in a situation where
4 certain things couldn't get done, so I understood that. But
5 going to the corner store was an issue and I didn't really buy
6 the excuse that he didn't have any food or anything to eat.
7 This is -- he lives with his mom. His mom is out on a daily
8 basis going to work, she's not homebound or anything like
9 that. It's just the two of them in the apartment. I assume,
10 you know, there was food to eat and so forth.

11 THE COURT: Yes. All right. Mr. Oneal, I hear you
12 and I suspect that there was a period of time where there was
13 some genuine, either confusion or perhaps some necessities
14 with respect to your obligations at the house, but it sounds
15 to me that the Probation Department made every effort to
16 accommodate those concerns and notwithstanding we find
17 ourselves with violations that it appears to me were
18 subsequent to the efforts by the Probation Department to
19 accommodate you and subsequent to the Probation Department
20 clarifying for you what your obligations were. So then at a
21 certain point, Mr. Oneal, you moved from confusion or where
22 the Court can say perhaps your conduct was based on confusion
23 or even your own sense of necessity, to a simple disregard for
24 the Court's order and the opportunities that the Court gave to
25 you.

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1 So I'll accept it's not a hundred percent black and
2 white. You still have a problem. All right.

3 Anybody else have anything that they'd like to add.
4 Ms. Berenson.

5 MS. BERENSON: No, thank you, your Honor.

6 THE COURT: All right. After assessing the facts in
7 this case and in light of the 3553(a) factors and the
8 sentencing guidelines as well as arguments from the parties, I
9 have determined that a sentence within the advisory guideline
10 range is warranted.

11 Mr. Creizman, I have accounted for or will account
12 for the Court's prior determination that Mr. Oneal's criminal
13 history was overstated. His conduct here doesn't change that
14 fact, that his criminal history was made up of conduct that
15 occurred when he was 16 years old and for the reasons that I
16 determined that it was overstated previously, I find that it
17 is overstated now. So if I did that, the guidelines range in
18 this case is six to 12 months, that's correct?

19 MR. CREIZMAN: That's correct, your Honor.

20 THE COURT: All right. So using the six to 12
21 months as the basis here, I'm sentencing Mr. Oneal to 12
22 months of custody, which means that -- no. I'm going to
23 sentence Mr. Oneal to 12 months and a day. And I'm doing
24 that, Mr. Oneal, so that you understand. I don't know how you
25 have conducted yourself since you have been in custody since

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1 July, however, as you know you have the opportunity to earn
2 good time. By sentencing you to 12 months and a day, you can
3 take advantage of good time served if, in fact, you have
4 earned it, which would allow you to be released at
5 approximately 10 months. It's 57 days, so it's 10 months and
6 three days, thereabouts.

7 But at this point, Mr. Oneal, you know, your liberty
8 is something you are going to have to decide is as important
9 to you as it has been to this Court. You're going to have to
10 decide that changing your life is as important to you as the
11 opportunities that have been provided to you to do so. So
12 hopefully, it is my hope that what Mr. Creizman will learn is
13 that you have indeed earned good time served, which would
14 bring the sentence here, in terms as a practical matter, in
15 line with what I believe Mr. Creizman and you all had hoped
16 for at the outset. So whether it is 10 months or 12 months
17 will be dependent on how well you have behaved since you've
18 been there.

19 I'm just curious, Mr. Oneal, what do you think? You
20 think while you've been there you've earned good time and that
21 this is going to look like it's closer to 10 months of actual
22 custody for you?

23 THE DEFENDANT: Oh, since incarcerated I've not
24 gotten into any trouble, your Honor. I've not gotten into any
25 trouble.

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1 THE COURT: All right. This is what I'm going to
2 tell you, don't get into any trouble while you are there. Do
3 not get into any. Whatever you've been doing up to now to
4 stay out of trouble, keep it up and you will have the
5 opportunity to be released consistent with the statute
6 concerning good time served.

7 Do you understand what I'm explaining to you?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: All right. All right. So again, I've
10 sentenced Mr. Oneal to 12 months and one day in custody. All
11 right.

12 Now, supervised release. I must also consider
13 whether to impose a term of supervised release. Now by
14 statute the Court may order a new term of supervised release.
15 The new term of supervised release following a violation could
16 be up to the maximum term of supervised release that was
17 authorized at the original sentencing. Again, that is three
18 years minus any custody ordered on a prior or current
19 violation.

20 Now in deciding a term of supervised release I must
21 consider factors that are similar to those considered for
22 custodial a period, but here they are set out in 18 U.S.C.,
23 Section 3583(c), that includes the nature and the
24 circumstances of the offense, history and characteristics of
25 the defendant, the need to afford adequate deterrents to

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1 criminal conduct, the need to protect the public from further
2 crimes of the defendant, the need to provide the defendant
3 with needed educational or vocational training, medical care
4 and other correctional treatment in an effective manner. The
5 need to avoid unwarranted sentencing disparities amongst
6 defendants with a similar record who have been found guilty of
7 similar conduct, and the need to provide restitution of any
8 victims of the offense, the kinds of sentences and the
9 sentencing range and other policy statements.

10 Ms. Berenson, I'll hear from you.

11 MS. BERENSON: Your Honor, the government defers to
12 probation on this but does believe that a period of supervised
13 release is important in this case.

14 THE COURT: Okay. Remind me, Probation -- there you
15 are -- what was your recommendation here.

16 THE PROBATION OFFICER: Your Honor, we recommended
17 three years of supervised release with four special
18 conditions. Would you like me to read them out or just
19 summarize them?

20 THE COURT: So I have them. I have them -- hold on,
21 give me a moment. I have the restitution order, the drug
22 treatment, employment, and the disclosure of financial records
23 as the special conditions. Am I missing something or are you
24 talking about -- hold on.

25 THE PROBATION OFFICER: Your Honor --

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1 THE COURT: Give me a second, I have it in front of
2 me. Here it is. Out-patient drug treatment, alcohol and
3 intoxicants, employment, disclosures, that's all I have. Am I
4 missing something?

5 THE PROBATION OFFICER: Your Honor, the very last
6 page of the violation number four requested a search
7 condition.

8 THE COURT: Yes, yes, yes, I see it. Okay. All
9 right.

10 All right, Mr. Creizman, you talked when we were
11 doing the custodial -- talking about the custodial sentence
12 here you talked a bit about the community confinement upon
13 Mr. Oneal's release. I believe that that would be a prudent
14 course here. But I'll hear from you in terms of supervised
15 release.

16 MR. CREIZMAN: Well, your Honor, I think the goal is
17 to try to get to help Mr. Oneal to help himself and do what he
18 has to do, and I think that maybe going directly to something
19 like house arrest, because I can't imagine that wouldn't be a
20 condition at least initially, if he went into home -- if he
21 went into community confinement initially and tried to take
22 advantage of, you know, all the programs he could possibly
23 take advantage of. I would hope that he demonstrates some
24 progress the Court would consider at the appropriate time
25 under the statute a motion for early termination of supervised

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1 release. That would be the goal, in my view, is that he
2 manages to demonstrate that he can be an involved parent, that
3 he can get his, you know, his employment under control, and so
4 on and get his life together. And so my -- that would be the
5 goal.

6 Meaning I don't think that a, you know, three-year
7 term of supervised release is lengthy, but my hope is that he
8 could demonstrate to the Court over the next -- once he is
9 released and then is released from the halfway house and going
10 into the community that he can actually succeed on his own and
11 raise his family and honor his obligations to the Court and to
12 his family and to himself.

13 THE COURT: Look, at the end of the day that's my
14 ultimate goal as well. I am a judge who believes strongly
15 that supervised release can be used as a tool to assist an
16 individual in that transition period if they take full
17 advantage of the resources that are made available to them,
18 and if the Court takes a reasonable approach to the way in
19 which it views an individual on supervised release.
20 Certainly, engaging in unlawful conduct or otherwise
21 disregarding the directives of the probation officer is not
22 viewed in this Court's estimation as acceptable behavior. But
23 I think here that -- how old is Mr. Oneal at this time?

24 THE DEFENDANT: Twenty-seven. Your Honor, can I ask
25 you something?

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1 THE COURT: Sure.

2 THE DEFENDANT: I was just -- what's his name, right
3 you said 12 months and a day. I'm just being like logical and
4 realistic. It's something me and my lawyer spoke about
5 previously the details, that fails -- like if I do twelve
6 months in jail or whatever, I got seven months in jail,
7 surrendered myself to jail, there's nothing -- there's nothing
8 going on here. We're locked in our cells 24/7. I'm not
9 asking for a lesser sentence or whatever, but what I'm saying
10 is right now moving forward I got to do three months or four
11 more months, I'm just really just stuck in my cell. There's
12 no -- nothing going on. There's no movement at all 'cause of
13 COVID. Like that really kind of like I feel doesn't --
14 doesn't rehabilitate, doesn't do nothing.

15 I'm not asking to be released or nothing, I'm asking
16 for community confinement because in a halfway house I could
17 get programs, I could get certain things that I need. When I
18 was released last I did not get halfway house, I was just
19 released. Not to say it wasn't me, but I feel like a halfway
20 house or like an inpatient drug program would kind of help me
21 better with mental health.

22 THE COURT: No, I hear you and I appreciate that.
23 I'm glad you and Mr. Creizman had the opportunity to talk
24 about the benefits of community confinement.

25 First, I'll say to you again, I sentenced you to a

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1 year and a day which hopefully if what you say is correct
2 about your conduct, means that what we're talking about is 10
3 months as opposed to 12.

4 But this is my question to you, Mr. Oneal. When I
5 let you out, then you went and committed these other crimes,
6 was COVID already present or was -- because, you know, some
7 people who committed crimes in February of 2020 had no idea
8 that COVID was coming down the pike. But if my memory serves,
9 you were released on compassionate release in part because of
10 COVID, and I'm pretty sure COVID was still going on when you
11 decided you were going to engage in unlawful conduct. So the
12 concerns regarding what happened when you were in jail during
13 COVID, you knew about those risks, right?

14 THE DEFENDANT: Yes, I definitely --

15 THE COURT: So you want me to care more about it
16 than you did?

17 THE DEFENDANT: No, listen, miss, I'm not telling
18 you to care -- I'm not even basing COVID on what I'm talking
19 about. All I'm saying is that in jail when COVID is going on
20 there's nothing going on at all. It's like me being put in a
21 closet, closing the door and it's, like, if I'm getting
22 rehabilitative services during these times I think I would be
23 best suited for.

24 THE COURT: I believe that as well. I wanted that
25 for you, Mr. Oneal, that's what I wanted for you. We had a

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1 long conversation about that. Read the transcript. Because I
2 went back and read the transcript from your recent sentencing
3 hearing.

4 THE DEFENDANT: I did too.

5 THE COURT: I know more about your case I think, you
6 know, than I do most in terms of all the details without
7 having to look at the paper because I went back and read it.

8 I want that for you. I want rehabilitation for you,
9 I want you to have access to resources, but right now,
10 Mr. Oneal, we've got to finish this time, that's what has to
11 happen first. And then once we get there, then I really do
12 hope that you take advantage of every, every resource that is
13 available to you.

14 THE DEFENDANT: I understand.

15 THE COURT: If there's a program you want to be part
16 of, if there's vocational programming you're interested in, if
17 there is mental health treatment that you're interested in, if
18 there's drug treatment that you're interested in, please tell
19 your probation officer and if your probation officer doesn't
20 act on it, you tell your lawyer to raise it with me. Because
21 I want you to have available to you every single opportunity
22 to succeed, but first we got to do this. But first we got to
23 do this.

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: All right. But I really --

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1 THE DEFENDANT: Yes.

2 THE COURT: -- hope that what you're talking about
3 here in terms of programs, et cetera, that when you come out,
4 that what you actually do is to try and take advantage of it.
5 I really hope that this isn't just lip service, but we will
6 all find out when you come out and hopefully you have earned
7 the right to come out sooner rather than later.

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: I will do everything in my power and my
10 authority to help you succeed and to make sure that you have
11 the resources to do so. So I'm going to do my job, when I am
12 asking you, Mr. Oneal, is that you do yours.

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right.

15 So, Mr. Creizman, I am just curious, when you say a
16 period of home confinement -- excuse me, I did it too now. I
17 am curious if you have a specific time period in mind that you
18 believe that community confinement that you have in mind.

19 MR. CREIZMAN: No, I don't actually. But I mean I
20 think that perhaps a three-month period is appropriate, but,
21 you know, it's hard really to make that assessment.

22 THE COURT: What about probation, what does
23 probation think.

24 THE PROBATION OFFICER: Your Honor, I'm thinking
25 through the practicality of this. Since your Honor sentenced

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1 today he may actually wind up going to a halfway house as part
2 of that sentence because there may be some time, but if he
3 does that, because of COVID and depending on his risk level,
4 they may actually put him on home confinement through the
5 halfway house which kind of puts him back to where he was
6 before, except it's not us monitoring him.

7 THE COURT: Wait, I'm a little confused. You're
8 telling me that my sentence, which says that Mr. Oneal should
9 stay in custody for three more months, may not be honored by
10 the BOP.

11 THE PROBATION OFFICER: No, I'm saying as part of
12 the BOP they may decide a portion of it can be served at the
13 halfway house.

14 THE COURT: If that's what they decide, they decide
15 in their own estimation, and so -- but that period of time
16 would be the remainder -- would be the remaining three months
17 and then after -- so he would have a three-month period
18 perhaps that the BOP has put him on community confinement, is
19 what you're saying.

20 THE PROBATION OFFICER: I'm saying that's a
21 possibility, but then if that did happen would your Honor want
22 him to have an additional three months as part of supervised
23 release.

24 THE COURT: What I would do is sentence him to an
25 additional three months of home confinement as part of

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1 supervised release. And Mr. Creizman, who is very diligent,
2 if he wanted to make an application to this Court after
3 demonstrating -- if Mr. Oneal were to demonstrate something to
4 my satisfaction perhaps I would reconsider it, but I would
5 certainly order it today nonetheless.

6 THE PROBATION OFFICER: Okay. I just wanted to be
7 clear on that one point depending on how it could work out.

8 THE COURT: Right. Look, Mr. Oneal, the BOP has the
9 ability to do what it would like to within the confines of the
10 law and I do believe -- thank you, Mr. Lehr, for reminding the
11 Court, the BOP may make a determination that it will place you
12 on home confinement for the remainder of the sentence that
13 I've imposed, but I've imposed my sentence nonetheless and I
14 will impose along with the supervised release that I do intend
15 to impose, an additional period of home confinement. And,
16 Mr. Creizman, I have no doubt that you will advocate as you
17 see fit for Mr. Oneal.

18 So I'm going to order here that Mr. Oneal be placed
19 on three years of supervised release with the first three
20 months in community confinement. The following three months
21 Mr. Oneal will be subject to a curfew as set out by the
22 Probation Department.

23 All right. In addition to the -- let me take a step
24 back. All right, Mr. Oneal, I need to make sure that you
25 understand that if you violate any of the conditions of your

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1 supervised release I may sentence you to up to two years in
2 prison without credit for your pre-release imprisonment or
3 time previously served on post-release supervision.

4 As I've indicated, I am sentencing you to three
5 years of supervised release. As a special condition of that
6 supervised release the first three months of supervised
7 release will be served in community confinement, the following
8 three months Mr. Oneal will be subject to a curfew. All
9 right.

10 Now during your period of supervised release you
11 must abide by the following mandatory conditions of supervised
12 release. Mr. Oneal, you must not commit another federal,
13 state or local crime.

14 You must not unlawfully possess a controlled
15 substance. You must refrain from any unlawful use of a
16 controlled substance and you must submit to one drug test
17 within 15 days of release from imprisonment and at least two
18 periodic drug tests thereafter as determined by the Court.

19 Mr. Oneal, you must make restitution in accordance
20 with 18 U.S.C., Section 3663 and 3663(a) and any other statute
21 authorizing a sentence of restitution.

22 Mr. Oneal, you must cooperate in the collection of
23 DNA as directed by the probation officer.

24 You shall also, sir, abide by the following standard
25 conditions of supervised release. You shall report to the

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1 probation office in the federal judicial district where you
2 are authorized to reside within 72 hours of release from
3 imprisonment unless the probation officer instructs you to
4 report to a different probation office or within a different
5 timeframe.

6 After initially reporting to the Probation office,
7 Mr. Oneal, you'll receive instructions from the Court or the
8 probation officer about how and when to report to the
9 probation officer and, Mr. Oneal, you shall report as
10 instructed.

11 Mr. Oneal, you shall not knowingly leave the federal
12 judicial district where you are authorized to reside without
13 first getting permission from the Court or the probation
14 officer. You shall answer truthfully the questions asked by
15 the probation officer.

16 Mr. Oneal, you shall live at a place approved by
17 the probation officer and if your plans change with respect to
18 where you live or anything about your living arrangements,
19 including the people you live with, you shall notify the
20 probation officer at least 10 days before the change. If
21 notifying the probation officer at least 10 days in advance is
22 not possible due to unanticipated circumstances, you shall
23 notify the probation officer within 72 hours of becoming aware
24 of a change or expected change. You shall allow the probation
25 officer to visit you at any time in your home or elsewhere

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1 and, Mr. Oneal, you shall permit the probation officer to take
2 any items prohibited by the conditions of your supervision
3 that the probation officer observes in plain view.

4 Mr. Oneal, you shall work full time and that is at
5 least 30 hours per week at a lawful type of employment unless
6 the probation officer excuses you from doing so. If you do
7 not have full-time employment, you shall try and find
8 full-time employment unless the probation officer excuses you
9 from doing so. If your plans change with respect to where you
10 work or anything about your work, you shall notify the
11 probation officer at least 10 days before the change. Now, if
12 notifying the probation officer in advance is not possible due
13 to unanticipated circumstances, Mr. Oneal shall notify the
14 probation officer within 72 hours of becoming aware of the
15 change or expected change.

16 To the extent that Mr. Oneal is enrolled in a
17 vocational training program, the Court will view that
18 vocational training program as satisfying his employment
19 obligation.

20 He shall not communicate or interact with someone he
21 knows is engaged in criminal activity. Mr. Oneal, if you know
22 someone's been convicted of a felony, you shall not knowingly
23 communicate or interact with that person without first getting
24 permission of the probation officer.

25 If you are arrested, Mr. Oneal, or questioned by a

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1 law enforcement officer, you shall notify the probation
2 officer within 72 hours.

3 Mr. Oneal, you shall not own, possess or have access
4 to a firearm, ammunition, destructive device or dangerous
5 weapon, that is anything that was designed or was modified for
6 the specific purposes of causing bodily injury or death to
7 another person like a taser.

8 You shall not act or make any agreement with a law
9 enforcement agency to act as a confidential human source or
10 informant without first getting permission from the Court.

11 If the probation officer determines, based on your
12 criminal record, personal history and characteristics and the
13 nature and circumstances of your offense, you pose a risk to
14 another person, including an organization, the probation
15 officer, with prior approval of the Court, may require you to
16 notify the person about the risk and you must comply with the
17 instruction. The probation officer may contact the person and
18 confirm that you have notified the person about the risk.

19 Mr. Oneal, you will follow the instructions of the
20 probation officer related to the conditions of your release.

21 In addition, Mr. Oneal, you must abide by the
22 following special conditions:

23 Mr. Oneal, you must participate in an out-patient
24 drug treatment program approved by the U.S. Probation
25 Department. You shall contribute to the cost of such

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1 treatment not to exceed an amount determined reasonable by the
2 Probation Department's sliding scale for substance abuse
3 treatment services and shall cooperate in securing any
4 applicable third-party payment such as insurance or Medicaid.

5 Mr. Oneal, you shall disclose all financial
6 information and documents to the probation officer to assess
7 your ability to pay.

8 Mr. Oneal, you shall not consume any alcohol or
9 other intoxicant during and after treatment unless granted a
10 prescription by a licensed physician and proof of the same is
11 provided to the Probation Department.

12 Mr. Oneal, you shall submit to testing during and
13 after treatment to ensure abstinence from drug and alcohol.

14 Next, Mr. Oneal, you shall maintain again full-time,
15 verifiable employment and/or you shall participate in
16 education or vocational training program as selected by the
17 Probation Department.

18 Three, upon request, Mr. Oneal, you shall provide
19 the U.S. Probation Department with the full disclosure of your
20 financial records, including commingled income, expenses,
21 assets and liabilities, to include yearly income tax returns.

22 With the exception of the financial accounts
23 reported and noted within the presentence report, Mr. Oneal,
24 you are prohibited from maintaining and/or opening any
25 additional individual and/or joint checking, savings or other

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1 financial accounts for either personal or business purposes
2 without the knowledge and approval of the U.S. Probation
3 Department.

4 Mr. Oneal, you shall cooperate with the probation
5 officer in the investigation of your financial dealings and
6 you shall provide truthful monthly statements of your income
7 and expenses, and you shall cooperate in the signing of any
8 necessary authorizations to release information forms
9 permitting the U.S. Probation Department to access your
10 financial information and records.

11 And, fourth, Mr. Oneal, you shall submit your
12 person, property, house, residence, vehicle, papers, computers
13 all of which are defined in 18 U.S.C., Section 1030(e)(1) and
14 other electronic communications or data storage devices or
15 media or office to a search conducted by the U.S. Probation
16 officer. Now failure to submit to a search may be grounds for
17 revocation of release.

18 Now, Mr. Oneal, you shall warn any other occupants
19 that the premises may be subject to searches pursuant to this
20 condition. Now an officer may conduct a search pursuant to
21 this condition only when reasonable suspicion exists that you
22 have violated a condition of your supervision and that the
23 areas to be searched contain evidence of this violation and
24 any search must be conducted at a reasonable time and in a
25 reasonable manner.

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1 Mr. Creizman, with respect to the special
2 conditions, the four that I've just outlined, in addition to
3 the community confinement and the curfew, are the reasons for
4 these special conditions apparent to you on the face of the
5 condition?

6 MR. CREIZMAN: They are, your Honor.

7 THE COURT: All right. All right.

8 Mr. Oneal, you have a statutory right to appeal the
9 sentence that I've imposed today under certain circumstances,
10 particularly if you believe your sentence is contrary to law.
11 Any Notice of Appeal must be filed within 14 days of the entry
12 of judgment or within 14 days of the filing of a Notice of
13 Appeal by the government. If requested, the Clerk of the
14 Court will prepare and file a Notice of Appeal on your behalf.
15 If you cannot afford to pay the cost of an appeal or for
16 appellate counsel, you have a right to apply for leave to
17 appeal in forma pauperis, which means you can apply to have
18 the Court waive the filing fee and on appeal, Mr. Oneal, you
19 may also apply for court-appointed counsel. All right.

20 Does the government wish to move to dismiss the
21 remaining charges?

22 MS. BERENSON: Yes, your Honor.

23 THE COURT: All the remaining charges are dismissed
24 on motion by the government.

25 Ms. Berenson, is there anything else from the

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1 government that the Court needs to address?

2 MS. BERENSON: No, your Honor.

3 THE COURT: Mr. Creizman?

4 MR. CREIZMAN: No, your Honor, thank you.

5 THE COURT: You're welcome.

6 Mr. Oneal, I said this to you before, I'm going to
7 say it to you again. It is my sincere hope that you take
8 advantage of the opportunities that are being presented to
9 you. I understand that the outcome today is not exactly what
10 it is that you wanted or hoped for, but in this, sir, are
11 still opportunities and you are going to get out of jail
12 perhaps immediately or perhaps within the next three months.
13 The ball is in your court. The direction that your life is
14 going to take is really going to be up to you.

15 You don't like jail, you've said it to your lawyer.
16 Don't put yourself in a position to be in front of me again,
17 all right. Ask for help when you need it and take advantage
18 of the resources that are available to you. You have an
19 excellent attorney who has advocated on your behalf and
20 whether you like the determination that I made here today or
21 not, you also have a judge who cares about your future. I
22 really believe that you have it in you to do more. You're
23 capable of doing more, so stop letting yourself down.
24 Understood?

25 THE DEFENDANT: Yes, ma'am.

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1 THE COURT: All right. Good luck to you and I
2 really do hope that the next time that I have you before me is
3 because it's being reported to me that you have successfully
4 completed your term of supervised release and that you are
5 on -- you know, having a happy and fruitful life. Well, maybe
6 not fruitful, I don't know why I said fruitful, but happy and
7 prosperous life.

8 All right. Good luck, Mr. Oneal. Do better, all
9 right?

10 THE DEFENDANT: Yes, ma'am.

11 MR. CREIZMAN: Thank you, your Honor.

12 THE COURT: All right. Bye, all. Good to see you.

13 MS. BERENSON: Thank you, your Honor.

14 THE COURT: Bye.

15 (Matter concluded.)

16 * * * * *

17 I certify that the foregoing is a correct transcript from the
18 record of proceedings in the above-entitled matter.

19 s/ Georgette K. Betts April 27, 2022

20 GEORGETTE K. BETTS DATE